

EDITOR'S NOTE

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ISSUED.

No. 86-1324

In The
Supreme Court of The United States

October Term, 1987

Lavoyd Wayne "Bill" Hardin

petitioner.

v.

Clifford F. McMaster

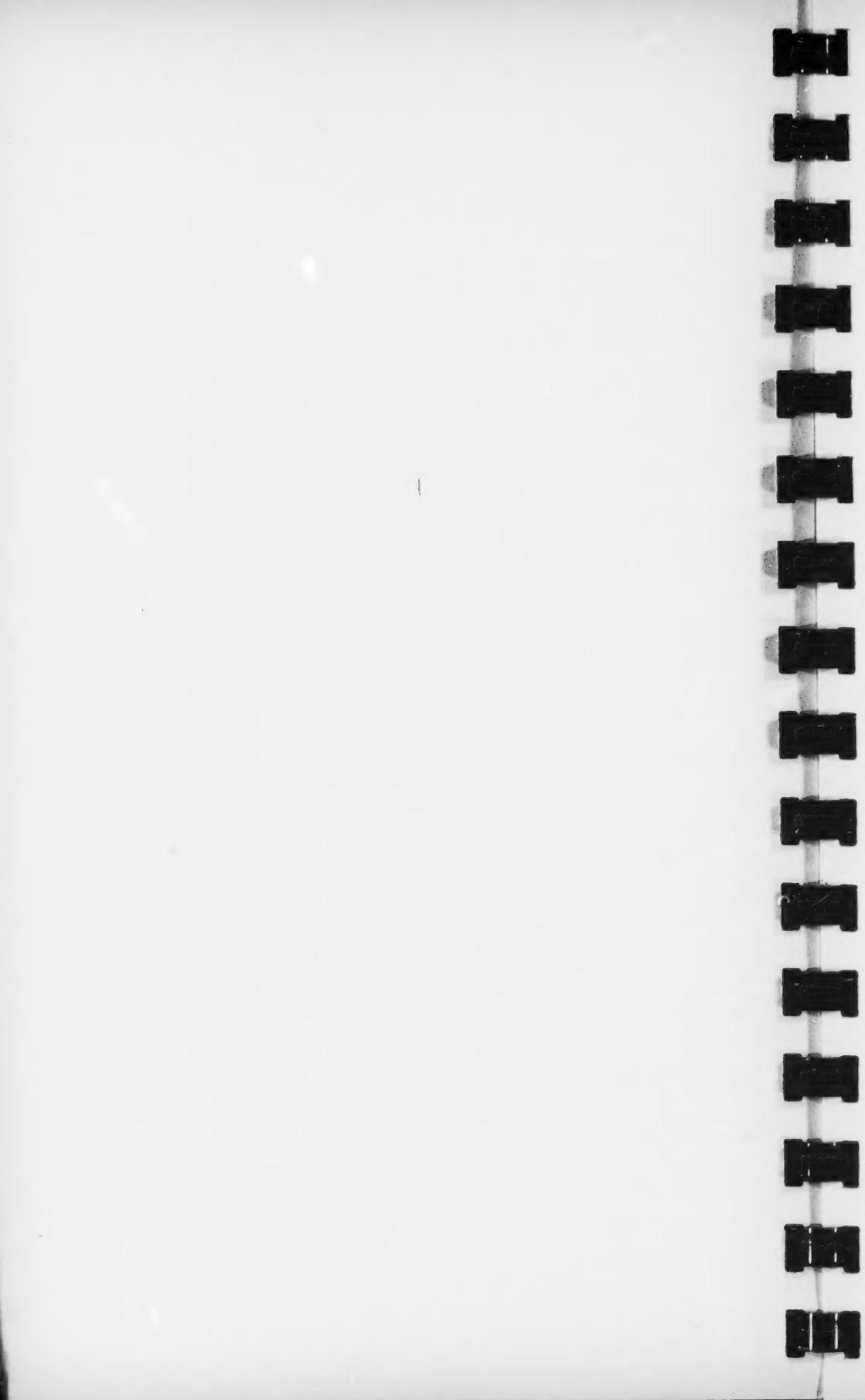
Respondent.

On Writ of Certiorari To The United
States Court of Appeals
For The Fifth Circuit

Supplement Appendix

Lavoyd Wayne "Bill" Hardin pro-se
Lavoyd Wayne "Bill" Hardin, pro-se
Route 1, Box 127A
DeLeon, Texas 76444
Telephone (817) 893-2686

5710



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IN THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LAVOYD W. "BILL"
HARDIN

VS.

CLIFFORD F.
MCMASTER

CIVIL ACTION
NO. 4-86-493-K

MEMORANDUM OPINION

Pending before the Court is the appeal of an order of the Bankruptcy Court denying the debtor-appellant's Motion to Remand.

Plaintiff-appellant previously filed a cause of action in the 220th District Court of Comanche County, Texas alleging misapplication of fiduciary property by the defendant. The state court proceeding was removed to Bankruptcy Court pursuant to 28 U.S.C. §1452. That Court subsequently denied Plaintiff's motion to remand. Plaintiff thereafter appealed the decision

to this Court.

Plaintiff's state court action is not a proceeding before the United States Tax Court, nor is it a civil action by a governmental unit to enforce such unit's policy or regulatory power. The Bankruptcy Court has jurisdiction to hear proceedings arising in or related to cases under Title 11, which includes matter concerning the administration of an estate. 28 U.S.C. §157;1334. Plaintiff's suit is therefore subject to removal under §1452. A decision regarding remand is not reviewable by appeal or otherwise. 28 U.S.C. §1452(b).

For these reasons, the Court is of the opinion that Plaintiff may not appeal the Bankruptcy Court's Order denying Remand.

An order will be entered in accordance with this memorandum opinion.

SIGNED this 16 day of July, 1986.

Signed by David O. Belew, Jr.

United States District Judge

IN THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LAVOYD W. "BILL"
HARDIN

VS.

CLIFFORD F.
MCMASTER

CIVIL ACTION
NO. 4-86-493-K

ORDER

In accordance with the accompanying Memorandum Opinion and for the reasons stated therein, Plaintiff's appeal of the Bankruptcy Court's Order denying remand is hereby in all things DENIED. Costs are taxed to the party incurring same.

IT IS SO ORDERED.

SIGNED this 16 day of July 1986.

Signed by David O. Belew, Jr.
United States District Judge

IN THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

No. 86-1545
Summary Calendar

In the Matter of:
LAVOYD W. "BILL"
HARDIN, Debtor,
LAVOYD WAYNE "BILL"
HARDIN,

Plaintiff-
Appellant,

versus

CLIFFORD F.
MCMASTER,

Defendant-
Appellee.

Appeal from the United States
District Court for the
Northern District of Texas
(Docket No. CA-4-86-493-K)

(November 20, 1986)

Before RUBIN, RANDALL, and HIGGINBOTHAM,
Circuit Judges.

PER CURIAM:

In this protracted bankruptcy proceeding, Lavoyd Wayne "Bill" Hardin, who has filed a number of previous appeals, now

v.

seeks to appeal a district court order denying remand of related proceedings to state court, from which the related proceedings had been removed pursuant to 28 U.S.C. §1452.

We lack jurisdiction to review an order denying remand. In re Rayburn Enterprises, Inc., 781 F. 2d 501 (5th Cir. 1986). This decision follows the command of 28 U.S.C. § 1452(b), which expressly provides:

An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise.

While Hardin also now seeks to have this court review all of the prior proceedings in this matter, those proceedings have either been previously reviewed by us or are not reviewable because they are interlocutory.

For these reasons, we DISMISS the appeal.

IN THE MATTER OF THE MARRIAGE
OF JOAN MURLE HARDIN AND
LAVOYD WAYNE (BILL) HARDIN,
AND IN THE INTEREST OF RODNEY
BILL HARDIN, A MINOR CHILD

IN THE DISTRICT
COURT OF
COMANCHE
COUNTY, TEXAS
52nd JUDICIAL
DISTRICT

ORIGINAL ANSWER OF RESPONDENT,
LAVOYD WAYNE (BILL) HARDIN

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Respondent in the above Cause, Lavoyd Wayne (Bill) Hardin, and makes this Answer to the Original Petition for Divorce filed herein under the styled and numbered proceeding set out first above.

(1)

This Respondent makes answer and appearance herein, by requesting upon final hearing of this Cause that all matters in controversy which are necessary to entry of Judgment herein be proved to the satisfaction of the Court by a preponderance of the evidence or full and satisfactory evidence as may be required by law.

WHEREFORE, PREMISES CONSIDERED, this Respondent prays for relief as stated above.

Respectfully submitted,

/

CAMPBELL AND CAMPBELL
Box 649
Hamilton, Texas 76531

by ANDREW CAMPBELL
Attorney for Respondent,
Lavoyd Wayne (Bill) Hardin

FILED December 15, 1975, by Ruth Page, District Clerk,
Comanche County, Texas

EXHIBIT B
NO. 12,551

JOAN MURLE HARDIN I IN THE 220th JUDICIAL
VS. I DISTRICT COURT OF
LAVOYD WAYNE HARDIN I COMANCHE COUNTY, TX

EXERPT - STATEMENT OF FACTS

Before The Honorable Andrew Campbell, Presiding Judge

APPEARANCES:

HON. KEITH WOODLEY, of the law firm of
Sudderth, Woodley and Dudley, 109 West
Grand Avenue, Comanche, Texas,

For the Plaintiff.

HON. JIM PARKER, Attorney at Law, P. O.
Box 762, Comanche, Texas,

For the Defendant.

BE IT REMEMBERED that on the 2nd day of November,
1978, the same being one of the regular days of the November,
1978 term of the 220th Judicial District Court of Comanche
County, Texas, the above entitled and numbered cause was

called for trial, whereupon, the following proceedings were had, to-wit:

EXHIBIT C

No. 12,551

JOAN MURLE HARDIN

VS.

LAVOYD WAYNE HARDIN,
ET AL

IN THE DISTRICT COURT
OF COMANCHE COUNTY,
TEXAS 220th
JUDICIAL DISTRICT

ANSWER OF VETERANS LAND BOARD
OF THE STATE OF TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Veterans Land Board of the State of Texas, and represents unto the Court as follows:

This Defendant is the owner of the land involved herein and is not a party to the note or deed of trust referred to in Plaintiff's petition. This Board sold the land to a veteran under the Veterans Land Program and presumably the note and lien in question were executed by the veteran. At the most, said note and lien will be a matter between said veteran and the mortgagee, and this Board is not involved.

WHEREFORE, said Board prays that its interest be fully protected and that no judgment be awarded against it and that it go hence and recover its costs.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

AUSTEN H. FURSE
Assistant Attorney General

Signed by: J. ARTHUR SANDLIN
Assistant Attorney General

ATTORNEYS FOR VETERANS LAND
BOARD OF THE STATE OF TEXAS

Filed August 14, 1978 by Ruth Page, District Clerk,
Comanche County, Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of Veterans Land Board of the State of Texas has been mailed by First Class Mail, Postage Prepaid, on this the 11th day of August, 1978, to Mr. Ben D. Sudderth, P.O. Box 89, Comanche, Texas 76442, attorney for Plaintiff.

Signed by J. ARTHUR SANDLIN.

EXHIBIT D

Lavoyd Wayne HARDIN, Appellant,

v.

Joan Murle HARDIN, Appellee.

No. 5313.

Court of Civil Appeals of Texas,
Eastland.

July 5, 1979.

Rehearing Denied July 26, 1979.

Holder of promissory note sued her former husband on the note. The 220th District Court, Comanche County, Andrew Campbell, J., entered judgment in favor of holder, and appeal was taken. The Court of Civil Appeals, McCloud, C. J., held that where objection to proposed amended answer failed to assert that such amendment would operate as a surprise to plaintiff and where there was no showing of surprise, trial court abused its discretion in refusing to grant leave to file amended answer on date of trial.

Reversed and remanded.

Pleading + 236(2)

Where objection to proposed amended answer failed to assert that such amendment would operate as a surprise to

plaintiff and where there was no showing of surprise, trial court abused its discretion in refusing to grant leave to file amended answer on date of trial. Rules of Civil Procedure, rules 63, 419.

Jim Parker, Comanche, for appellant

Keith Woodley, Sudderth, Woodley & Dudley, Comanche, for appellee.

McCLOUD, Chief Justice.

Plaintiff, Joan Murle Hardin, sued her former husband, Lavoyd Wayne Hardin, on a promissory note in the original principal sum of \$25,000. On the date set for trial, defendant attempted to file an amended answer containing several affirmative defenses. The court denied defendant leave to file the amended pleading. The case proceeded to trial, and the court entered judgment for plaintiff for \$23,500 plus interest and attorney's fees. The court also ordered foreclosure of a deed of trust lien, securing the note, on property owned by defendant. Defendant has appealed. We reverse and remand.

Defendant filed a pro se answer on July 28, 1978. The case was set for trial for October 20, 1978. Defendant employed an attorney on October 18, 1978. The attorney on that

date filed a motion for continuance which was granted continuing the case until October 27, 1978. On October 27, 1978, the attorney filed a second motion which was granted continuing the case until November 2, 1978. On November 2, 1978, defendant and his attorney were present for trial and at that time attempted to file an answer amending the original handwritten "answer" filed by defendant. The court refused to grant leave to file the amended pleading.

Defendant states in his brief that the continuance granted by the court on October 27, 1978, continuing the case to November 2, 1978, was for the "purpose of filing pleadings." This statement is not challenged by appellee. Tex.R.Civ.P.419. Defendant points out that there are only six days between October 27 and November 2.

Tex.R.Civ.P. 63 provides:

Parties may amend their pleadings, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided, that any amendment offered for filing within seven days of the date of trial or thereafter, or after

such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, *which leave shall be granted by the judge unless there is a showing that such amendment will operate as a surprise to the opposite party.* (Emphasis added)

The rule clearly requires that the party opposing an amendment show that such amendment will operate as a "surprise" to him. Plaintiff's only objection to the tendered amendment was that it had not "been filed within the seven day rule." He made no objection, as required by Rule 63, that the proposed amended answer would "operate as a surprise" to him. There is no "showing" in the record that the amendment would operate as a surprise. The record will not support an implied finding by the trial court that the amendment would operate as a surprise. There are several cases holding that it is not an abuse of discretion to deny leave to file an amendment on the day set for trial. In those cases, however, there was an objection that the amendment would operate as a surprise. *Box v. Associates Investment Company*, 389 S.W.2d 687 (Tex. Civ.App.—Dallas 1965, no writ); *Roeber v. DuBose*, 510 S.W.2d 126 (Tex.Civ.App.—Corpus Christi 1974, no writ). No such objection was made in the instant case. Also, this is not a case

where the transcript merely shows the amendment was tendered and refused. *Herrin Transportation Co. v. Parker*, 425 S.W.2d 876 (Tex.Civ.App.—Houston (1st Dist.) 1968, writ ref'd n. r. e.); *Patino v. Texas Employers Insurance Association*, 491 S.W.2d 754 (Tex.Civ.App.—Austin 1973, writ ref'd n. r. e.). The statement of facts in the instant case reflects clearly the circumstances surrounding the tendered amendment and the objections thereto.

We hold that the trial court, since the objection failed to assert surprise and there is no showing of surprise, abused its discretion in not granting leave to file the amended answer. See *Vermillion v. Haynes*, 147 Tex. 359, 215 S.W.2d 605 (1948).

Judgement of the trial court is reversed, and the cause is remanded for a new trial.

//

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:

LAVOYD WAYNE "BILL" HARDIN
SS #454-44-9464,
aka BILL HARDIN
Debtor

CASE NO.
480-00513
Chapter 13

PROOF OF CLAIM
OF VETERANS LAND BOARD OF TEXAS

The Veterans Land Board of Texas, established under Article III, Section 49-b of the Constitution of Texas, acting herein through Ralph T. Aldave, Assistant Attorney General of the State of Texas, who resides in Austin, Texas, as agent and attorney for Claimant, makes this Proof of Claim in behalf of Claimant.

The Bankrupt was, at the time of the filing of the petition initiating this case, and still is, indebted to this Claimant in the principal sum of \$950.40, together with interest of \$15.08 to October 31, 1980, and interest of \$.07 per day and -0- per day penalty from that date until paid. The total amount due this Claimant, as of the time that Bankrupt filed for bankruptcy, is \$965.48.

Acting under the Texas Veterans Land Program, Claimant

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sold to Bankrupt, on a long-term Contract of Sale and Purchase, the real property described therein. Under such contract, Claimant retains ownership of such property until the purchase price is paid in full. Copy of such contract is attached hereto.

No judgment has been rendered on this claim.

The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

This claim is not subject to any setoff or counterclaim.

The security interest of Claimant is that it owns said land until said purchase price is paid in full under terms of the attached contract.

DATED this the 6th day of March, 1981.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

- JAMES R. MEYERS
Assistant Attorney General

CARL E. GLAZE
Assistant Attorney General

Signed by RALPH T. ALDAVE
Assistant Attorney General
Bar ID #00979600

P. O. Box 12548
Capitol Station
Austin, Texas 78711
Ph. 512-479-8191

ATTORNEY FOR CLAIMANT
VETERANS LAND BOARD
OF TEXAS

EXHIBIT F

BANKRUPTCY COURT

Transcript dated March 3, 1982

PROCEEDINGS

Page 3, lines 6 through 8:

THE COURT: The last matter is the hearing on confirmation of the proposed plan of debt adjustment of Lvaoyd Wayne Bill Hardin in the Chapter XIII Case Number 4-80-00513.

I've ruled that Mr. Hardin may in his plan provide for curing the default on certain notes executed to Mrs. Hardin.

Page 84, line 25 through page 85, lines 1 & 2:

His only alternative - He does have an alternative, and that is to sell the property and pay the indebtedness off.

EXHIBIT G

ATTENTION ASSIGNEE: IT IS THE RESPONSIBILITY OF
THE ASSIGNEE TO SATISFY HIMSELF AS TO THE CON-
DITION OF THE TITLE FROM THE TIME OF THE ORIG-
INAL VETERANS PURCHASE TO THE PRESENT TIME

ASSIGNMENT OF CONTRACT OF VETERANS LAND BOARD
CONTRACT OF SALE AND PURCHASE 3096

4970 (To Be Submitted in Duplicate)

STATE OF TEXAS

COUNTY OF ERATH/COMANCHE

WHEREAS, LAVOYD W. HARDIN of Comanche County, Texas, hereinafter called Assignor, whether one or more, and J. A. HARDIN, hereinafter called Assignee, whether one or more, whose date(s) of birth, respectively, is (are) 11-7-43 and whose mailing address is Route 1, DeLeon, TX 76444 desire to make and accept an assignment of that certain Contract of Sale and Purchase dated 9-20-55 recorded in Vol. 351 and 284, Page(s) 406 and 317, of the Deed Records of Erath County and Comanche County, Texas, to which instrument(s) and the record thereof reference is here made for all legal and pertinent purposes; and,

WHEREAS, the parties hereto agree and understand that

this Assignment is subject to and is governed by the Provisions of Acts 51st Legislature, R. S. 1949, Ch. 318, as amended, and the Rules and Regulations of the Veterans Land Board of the State of Texas, and shall not be effective until approved by the Chairman or Acting Chairman of the Veterans' Land Board;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, the Assignor, for and in consideration of Ten and no/100 (\$10.00) Dollars, and other good and valuable consideration, in hand paid by the Assignee, the receipt of which is hereby acknowledged and confessed, and for the payment of which no right of lien, express or implied, is hereby retained or shall exist, does hereby assign, transfer and convey unto the said Assignee the above referenced Contract of Sale and Purchase and all of the right, title and interest of the said Assignor in and to the tract of land described in said Contract of Sale and Purchase except as may be indicated hereinabove;

TO HAVE AND TO HOLD the same unto the said Assignee, his heirs, executors, administrators and assigns forever, subject, however, to the terms, conditions and stipulations embodied in said Contract of Sale and Purchase:

AND, the Assignee does hereby accept the assignment of said Contract of Sale and Purchase and does hereby agree to assume all of the obligations provided for therein including the amendments thereto, if any, set out hereinbelow; And, the Assignee does hereby further agree to accept the assignment of said Contract of Sale and Purchase as a (veteran) (non-veteran) and to comply with and be bound by the Statute referred to hereinabove and the Rules and Regulations of the Veterans Land Board of the State of Texas.

(TO APPLY ONLY IF ASSIGNEE IS TAKING THE
ASSIGNMENT AS A NON-VETERAN)

Since the Assignee herein is not taking this assignment as a veteran, and in order to comply with the above referenced Act, as amended, in regard to the transfer and assignment of a Contract of Sale and Purchase to non-veterans, the Contract between the original veteran purchaser and the Board is amended as follows: The semi-annual installments set out in said Contract shall be changed to \$138.18 One Hundred Thirty-eight and 18/100 (\$138.18) due and payable semi-annually on or before the first day of each November and May thereafter until the total purchase price and interest have been paid. The

interest rate on the unpaid principal balance shall from the effective date of this assignment be ten (10) per cent per annum.

G.L.O.-V-61A-(1-82)

276-21800

* * * * *

WITNESS OUR HANDS this the 24th day of August,
A.D. 1983.

APPROVED: (Signed by)

GARRY MAURO, Chairman
Veterans Land Board
State of Texas
Austin, Texas

Signed by: Lavoyd W. Hardin, Assignor

and: J. A. Hardin, Assignee

DOUBLE ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF ERATH

Before me, the undersigned authority, on this day personally appeared LAVOYD W. HARDIN and J. A. HARDIN; both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 24th
day of August, 1983.

Signed by: JOHN C. BOUCHER
Notary Public in and for
Erath County, Texas
Commission Expires: 1-10-84

SINGLE ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared Garry Mauro, Chairman, Veterans Land Board of the State of Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the 7th day of September, A.D. 1983.

Signed by: CHRIS ALONZO
Notary Public in and for
Travis County, Texas

G.L.O.-V-49-(1-82)

FILED FOR RECORD at 1:45 o'clock P.M. SEP. 12, 1983
by Pauline Chandler, Clerk, County Court, Erath County, TX

THE STATE OF TEXAS

COUNTY OF ERATH

I, PAULINE CHANDLER, Clerk of the County Court of Erath County, Texas, do hereby certify that the above and foregoing is a true and correct copy of the original document as recorded in my office in Vol. 620 Page 657. Given under my hand and the seal of said court of office in Stephenville, Erath County, Texas, this 15th day of June A.D. 1984.

Pauline Chandler,
Clerk of the County Court, Erath County, Texas

Signed by: HERLINE WALTON, Deputy

EXHIBIT H

STATE OF TEXAS

IN THE NAME OF THE STATE

COUNTY OF TRAVIS

OF TEXAS

0271

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TO ALL TO WHOM THESE PRESENTS SHALL COME,
KNOW YE:

WHEREAS, the VETERANS LAND BOARD OF THE STATE OF TEXAS has, in accordance with the provisions of the Texas Veterans Land Act, purchased a certain tract of land hereinafter described and has resold said land under Contract of Sale and Purchase to the GRANTEE hereinafter named; and

WHEREAS, said GRANTEE has complied with the requirements of said BOARD and with the provisions of said Act, and has paid the entire indebtedness due under said Contract of Sale and Purchase; and

WHEREAS, upon payment of the entire indebtedness due under said Contract of Sale and Purchase, said BOARD shall execute a deed to the original veteran purchaser or to the last assignee whose assignment has been approved by said BOARD; and

WHEREAS, the Chairman of said BOARD, or in his absence or illness the Acting Chairman of said BOARD, is fully

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empowered and authorized to execute and deliver such deed;
NOW, THEREFORE,

FOR AND IN CONSIDERATION of the sum of
SIX THOUSAND, SEVEN HUNDRED FIFTY and NO/100
(\$6,750.00) DOLLARS, cash in hand paid to said BOARD by
said GRANTEE, the receipt of which is hereby acknowledged
and confessed, said BOARD has GRANTED and CONVEYED,
and by these presents does hereby GRANT and CONVEY, unto

J. A. HARDIN
Route 1, DeLeon, TX 76444

GRANTEE, all that certain lot, tract, or parcel of land more
particularly described as

that 154.3 acre tract situated in the M. V. Robinson and the
T. E. Ely Surveys, Comanche and Erath Counties, Texas, des-
cribed by metes and bounds in the Warranty Deed to the
Veterans Land Board dated September 22, 1955, recorded in
Vol. 284, page 316, Comanche County, Texas and recorded in
Vol. 351, page 404, Erath County, Texas; and also further
described in that Contract of Sale dated September 20, 1955,
recorded in Vol. 284, page 317, Comanche County, Texas and
recorded in Vol. 351, page 406, Erath County, Texas; and
assigned on August 24, 1983 to GRANTEE herein.

This conveyance is made SUBJECT TO any reservations, conditions or agreements set out in the instruments cited above.

HEREBY relinquishing unto said GRANTEE, his heirs and assigns, forever, all of said BOARD'S right, title, and interest in and to said land;

BUT IT IS AGREED AND UNDERSTOOD that in the event that a patented survey of which the above described tract of land is a part contains excess acreage, or that unsurveyed school land contained within the boundaries of the above-described tract of land, said BOARD by the execution of this deed does not purport to grant or convey any right, title, or interest in and to such excess acreage or unsurveyed school land.

WITNESS MY HAND AND SEAL OF THE VETERANS LAND BOARD OF THE STATE OF TEXAS, this the 6th day of January, 1984.

Signed by: GARRY MAURO, Chairman
VETERANS LAND BOARD
OF THE STATE OF TEXAS

Filed 20th day of January, 1984 at 4:00 o'clock P.M.

Recorded 23rd day of January, 1984 at 9:00 o'clock A.M.

BETTY CONWAY, COUNTY CLERK

Signed by: Billie R. Vineyard, Deputy

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CLERK'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF COMANCHE

I, Betty Conway, Clerk of the County Court of Comanche County, Texas, do hereby certify that the above and foregoing is a true and correct copy of

1. Deed

as same appears of record in volume 570, Page 206 of the Deed Records of Comanche County, Texas.

Given under my hand and seal of office in the City of Comanche, Comanche County, Texas, this 15th day of June A.D., 1984.

BETTY CONWAY, County Clerk
Comanche County, Texas

by: Billie R. Vineyard, Deputy

EXHIBIT I

July 6, 1983

DeLeon Free Press
100 N. Texas
DeLeon, Texas 76444

Comanche Chief
203 W. Grand
Comanche, Texas 76442

Dear Sirs:

Please run the following ad in your classified section for six weeks or until you are advised to cancel it, which ever occurs first.

FOR SALE 154 acres within five miles of DeLeon less than 1/4 miles from Highway 16. This is a Court Ordered sale. Interested persons should address inquiry to: Land P.O.Box 89, Comanche, Texas 76442 persons making inquiry will be contacted regarding inspection of the property and making of a bid.

Thank you.

Sincerely,

BEN D. SUDDERTH, ATTORNEY
BDS/lg

UNITED STATES DISTRICT COURT

Transcript dated November 3, 1983

Page 20, lines 3 through 23:

MR. HARDIN: Well, that hearing we had on the homestead, well, St. Clair was going the farm was homestead, which I was wanting to go the farm is my business homestead. The house and lot in DeLeon is my homestead, but the farm is my business homestead. And, of course, the Texas constitution covers both of them just alike. They are both exempt from forced sale.

THE COURT: I haven't looked at the statutes in some time, but I believe there is some difference in a business homestead and a farm being a business homestead. I mean, these lawyers here are more up on that, but I believe there's a complete — I believe there is a difference in — if you are in a grocery business down here, well, that's a business. You can have a business homestead.

MR. HARDIN: But if farming is not a business, well, I'm in the wrong business.

THE COURT: Well, I think there's different statutes that

are applicable or different law that's applicable from a business homestead, and I know these laws have been changed, and I haven't looked at this in many a day. So your lawyers are a little more up on this.

EXHIBIT K
UNITED STATES BANKRUPTCY COURT

PROCEEDINGS

March 9, 1984

11:40 a.m.

Transcript page 4, lines 12 through 25 and
page 5, lines 1 through 25:

THE COURT: All right. Mr. Hardin, are you here representing yourself?

MR. HARDIN: No, sir. I was — I was wanting to get an extension. I have an attorney hired but he had other commitments today and couldn't make it here.

THE COURT: Who's your attorney?

MR. HARDIN: He was Ralph Perry Miller. I believe that's his name.

THE COURT: Did you make Mr. Colvin aware of the fact that you had retained counsel?

MR. HARDIN: Yes. Out — out in the hall.

THE COURT: I mean prior to today?

MR. HARDIN: No. I just got him yesterday.

THE COURT: Where does Mr. Perry live?

MR. HARDIN: He lives in Dallas.

THE COURT: Do you have his phone number?

MR. HARDIN: I might have. I was aiming to bring it.

THE COURT: Mr. Colvin?

MR. COLVIN: Your Honor, the particular Defendant in this proceeding, J. A. Hardin, and he is present in the court-room. I do not know what interest Mr. Lavoyd Wayne "Bill" Hardin has in the proceeding where a continuance would be appropriate for him to request. The relief prayed for originally was against the Veterans Land Board, which the Court granted, and Mr. J. A. Hardin.

THE COURT: All right. Mr. J. A. Hardin, are you here?

MR. J. A. HARDIN: Yes, sir.

THE COURT: Please come forward.

Do you have an attorney? You may stand there.

Do you have an attorney?

MR. J. A. HARDIN: No, sir. I live in Tennessee and I just got served these papers last Friday afternoon, and I consulted with my attorney in Tennessee Monday, and he told me to find an attorney over here to represent me, and we have found one but the schedule, you know, being like it is, they could not fit — he told us he couldn't fit any — in his schedule

this morning.

THE COURT: I'm going to hear the evidence from the
Trustee.

EXHIBIT L

UNITED STATES DISTRICT COURT

Transcript dated March 9, 1984

Page 10, lines 3 through 12:

Now, as I said, I'm going to hold this hearing in abeyance until I see what you are going to do concerning this matter.

But I would — I know you don't want to have any problems about this, and certainly it wouldn't be in your best interest. I mean, you know, I don't want to hold anybody in contempt of court or contempt of orders and so forth. You know, there's civil contempt, there's criminal contempt, and on a matter of this type, you could be placed in jail until you comply with the Court's order, and that is, signing the deed. I'm just advising you what the consequences can be.

Page 10, lines 18 through 24:

So you ought to get with Mr. Colvin and Mr. McMaster over here and you all work this out because all you are going to do — it is costing you time and money and expense and inconvenience and could result in some serious consequences. And, if you don't have an attorney and want to talk to an attorney, I can understand that, but you need to get — of

course, Mr. Colvin is the attorney representing the trustee

Page 16, lines 2 through 20:

THE COURT: Oh, no. Under the magistrate's — under — you have got to convey it to him. I mean, under this order that Judge McClinchey — I mean, Judge McConnell has entered, you have got to convey it to the trustee in bankruptcy. He just holds it for the Court. But you can't go sell it to Mr. Joe Doe out here or something like that or incumber it or anything of that kind.

MR. J. A. HARDIN: You mentioned mortgage. Could I pay off what is against the place?

MR. COLVIN: Your Honor, he cannot. All he can do is buy it. The property is within the jurisdiction of the Court.

THE COURT: It is in the court. That is all subject to the Court. Anything that is going to be done with this piece of property has to be approved by the Court.

Now, that's the reason you need to talk to the trustee in bankruptcy. You can buy the piece of property. You can't buy it for what is against it, I'm sure, because it is worth more than that. But you are going to have — I mean, all the full debts and everything.

UNITED STATES BANKRUPTCY COURT

Transcript dated May 25, 1984

Page 19, lines 24 & 25, Page 20, lines 1 through 13:

CROSS-EXAMINATION

BY MR. HARDIN:

Q. Okay. Mr. McMaster, did you ever receive a phone call from Lavoyd Wayne "Bill" Hardin wanting to pay off this indebtedness?

A. I don't know whether I did or not.

Q. Well, I do, and you did.

A. Well, why don't you testify to that then?

Q. And — and did you tell him how much it was, or did he ask?

A. Told you that I don't recall such a phone call, Mr. Hardin.

MR. HARDIN: Well, okay. I'd like for the record to show that I did call him and wanted to know what, to the penny, it was to pay off this indebtedness. I was wanting to pay it off, and he wouldn't tell me.

Page 21, lines 7 through 17:

THE COURT: All right. Mr. Hardin, is there any other evidence you wish to offer?

MR. HARDIN: Well, J. A. Hardin also called Mr. McMaster wanting to pay it off, but he wouldn't accept it. He also called Joe Calvin (sic) wanting to pay it off, and he said, We will take the money and the deed but we will not take the money without the deed. So this was — this has tried to be paid off two or three different times completely, and the Trustee would not accept it. The Trustee's attorney would not accept it,

Page 21, lines 22 through 25:

I tried to pay it off, but now everything — the validity of that deed is on appeal in New Orleans, and also the homestead and also the Chapter 7. It's all on appeal. I got the case numbers.

EXHIBIT N

UNITED STATES BANKRUPTCY COURT

Transcript dated June 28, 1985

Page 13, lines 1 through 25, Page 14, line 1:

MR. HARDIN, PRO SE: Okay. Well, I'd like to call Mr. McMaster to the stand.

THE COURT: What do you intend to ask Mr. McMaster about?

MR. HARDIN, PRO SE: If he had received a phone call from me wanting to pay off the indebtedness.

THE COURT: Can you explain to me what that has to do with Mr. Newbern's request for attorney's fees?

MR. HARDIN, PRO SE: Well, see, I sold this property to J. A. Hardin for the main purpose to stay out of court, to pay the court off, to pay the Trustee off, to pay the attorneys off. I sold the property. I phoned the Trustee to pay it off every bit of it to the penny. He would not accept it. I phoned my ex-wife and she would not accept it.

THE COURT: Well, I think we can speed this matter up. Mr. McMaster, will you stipulate you received a phone call from Mr. Hardin?

MR. McMASTER: I received probably more than one phone call from him over the period of time involved, you know, since I became Trustee. Yes, sir.

THE COURT: Do you remember a phone call that had something to do with what he's talking about?

MR. McMASTER: Yes, sir, I do.

THE COURT: You'll stipulate you received such a phone call?

MR. McMASTER: Yes, sir. I received such a phone call.

EXHIBIT O

The following is a personal affidavit from J. A. Hardin:

"I bought a piece of property from Lavoyd Wayne "Bill" Hardin on 24th day of August, 1983. I paid off the remaining amount of the Veterans Land Board Contract, and received the title January 6, 1984, and was recorded in Erath & Comanche Counties. I was served with papers to appear in court at Fort Worth on March 9, 1984. My attorney in Tennessee told me I would have to get a Texas attorney to represent me. I told this to the judge and told me I would not need one. He told me if I did not sign the deed over I could be found in contempt of court and be put in jail. I have a wife and four small children. It upset them. After the hearing the attorneys got me outside the courtroom and told me if I did not sign the deed they would assure me that I would be put in jail until I decided to sign the deed.

I would have liked to have kept the farm as I was thinking about building a house on it. I asked the judge if I could pay off what was against the place and keep it. The attorney told me I could not.

signed this 27 day of December, 1984

by J. A. HARDIN

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EXHIBIT P

No. 1897 WARRANTY DEED

THE STATE OF TEXAS,) KNOW ALL MEN BY THESE
COUNTY OF COMANCHE) PRESENTS: That we, Lloyd
L. Hardin and wife Vivian Hardin of the County of Comanche,
State of Texas for and in consideration of the sum of Six
Thousand Seven Hundred Fifty and No/100 --- DOLLARS to
us in hand paid by The Veterans' Land Board of Texas,
receipt of which is hereby acknowledged and confessed; RE-
CEIVED SEP 1 1955 GENERAL LAND OFFICE have Granted,
Sold and Conveyed, and by these presents do Grant, Sell and
Convey unto the said The Veterans' Land Board of Texas of
the County of Travis, State of Texas all that certain lot, tract
or parcel of land lying and being situated in the Counties of
Comanche and Erath, in the State of Texas, out of the M. V.
Robinson and the T. E. Ely Surveys and being the same land
which V. V. Bell and wife Addie Bell conveyed to Lloyd L.
Hardin by deed dated November 26, 1946, and duly recorded
in Vol. 343, Page 633, Deed Records of Erath County, Texas,
to which reference is here made and said land being described
by metes and bounds according to survey made on the ground

by Ernest Fletes, County Surveyor of Freestone County, on May 26, 1955, in two tracts as follows: FIRST TRACT: BEGINNING at a stake in South Railroad Row Line & West Line of M. V. Robinson Survey; THENCE S. 18 W. 446.7 vrs.; THENCE S. 19 W. 677 varas to a corner fence post at the N.W. corner of the M. M. Dixon land for the S.W. corner of this tract; THENCE S. 71 E. 668 varas following the North line of the M. M. Dixon land and the South line of the T. E. Ely 80 acres (Southern 80 acres) to a stake in channel of Flat Creek, the S.E. corner of a tract of 77 acres conveyed by V. V. Bell et ux Addie Bell to Lloyd L. Hardin as per deed of record in Vol. 343, Page 633 of the Erath County Deed Records.

THENCE following the meanders of Flat creek as follows:

| | |
|-------------------|--|
| N. 12 W. | 118 vrs. a stake |
| N. 25 E. | 76 vrs. a stake |
| N. 43 E. | 105 vrs. a stake |
| N. 42½ E. | 32 vrs. a stake |
| N. 69 deg. 45' E. | 19 vrs. a stake |
| N. 54 E. | 94 vrs. a stake |
| N. 51 W. | 62 vrs. a stake |
| N. 26 E. | 15 vrs. a stake |
| N. 22 W. | 50 vrs. a stake |
| N. 4 E. | 60 vrs. a stake |
| N. 54 E. | 82 vrs. a stake |
| N. 16 deg. 45' E. | 22 vrs. a stake |
| N. 9 deg. 30' W. | 58 vrs. the S.E. corner of the Robinson Survey |

THENCE N. 17 deg. 30' E. 299.8 vrs. a stake in South Rail-

road Row; THENCE N. 57 deg. 02 minutes W. 671.7 vrs. along South Railroad R.W. to place of beginning, containing 122.8 acres, more or less. SECOND TRACT: BEGINNING at a stake in North Railroad R. W. Line & West Line of M. V. Robinson Survey; THENCE N. 18 E. 195.5 vrs. to a stake; THENCE S. 70 E. 647 vrs. to a P. O. tree for N.E. Corner of M. V. Robinson Survey; THENCE S. 17 degrees 30 minutes W. 344.5 varas to stake in North Railroad R. W. line; THENCE Along North Railroad Row Line N. 57 degrees 02 minutes W. 671.7 varas to place of beginning; containing 31.5 acres, more or less. MINERAL RESERVATIONS: The grantors herein, Lloyd L. Hardin and wife Vivian Hardin, own an undivided 73.250/146.5 interest in and to the oil, gas, and minerals in and to the above-described tracts of land, together with the exclusive right to lease the entire premises herein conveyed for oil, gas, and mineral purposes, without the joinder and consent of the other mineral and/or royalty owners. All of the grantors' said undivided interest in and to the oil, gas, and minerals, together with grantors' exclusive right to lease said premises for oil, gas, and mineral purposes, is hereby expressly conveyed unto The Veterans' Land Board of Texas, its successors and

assigns forever, no part of same being reserved by the said grantors. The remainder of the oil, gas, and minerals in and to the tracts of land herein conveyed is held and vested as follows: An undivided 14.125/146.5 interest in the oil, gas, and minerals is owned by H. K. Galloway and wife Viola Galloway; an undivided 22.500/146.5 interest in the oil, gas, and minerals is owned by Edgar Galloway and wife Vivian Galloway; An undivided 36.625/146.5 interest in the non-participating royalty only in and to the oil, gas, and minerals is owned by S. C. Price and wife Lillie Price. The above-described mineral interests were created in conveyances and/or reservations executed, delivered, and recorded prior to June 6, 1949, as follows: (1) Mineral deed from M. E. Galloway and wife H. K. Galloway to H. K. Galloway dated February 5, 1925, recorded in Vol. 239, Page 186, Deed Records of Erath County, Texas. (2) Warranty deed from M. E. Galloway et ux to N. B. Benson, dated February 5, 1926, recorded in Vol. 209, Page 171, Deed Records of Erath County, Texas. (3) Warranty deed from N. B. Benson et ux to S. C. Price, dated February 10, 1928, recorded in Vol. 211, Page 247, Deed Records of Erath County, Texas. (4) Warranty deed from S. C. Price et ux to E. O. Bell,

dated April 12, 1945, recorded in Vol. 286, Page 40, Deed Records of Erath County, Texas. (5) Warranty deed from E. O. Bell et ux to V. V. Bell, dated October 8, 1945, recorded in Vol. 287, Page 584, Deed Records of Erath County, Texas. (6) Warranty deed from V. V. Bell et ux to Lloyd L. Hardin, dated November 26, 1946, recorded in Vol. 343, Page 633, Deed Records of Erath County, Texas. (7) Declaration of Mineral Interest executed between H. K. Galloway and wife Viola Galloway, Edgar Galloway and wife Aurelia Galloway, Lloyd L. Hardin and wife Vivian Hardin, and S. C. Price and wife Lillie Price, dated September 11, 1948, and recorded in Vol. 348, Page 329, Deed Records of Erath County, Texas. TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said The Veterans' Land Board of Texas, its successors and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators, to Warrant and Forever Defend all and singular the said premises unto the said The Veterans' Land Board of Texas, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Witness our hands at DeLeon, Texas this 22nd day of September, A.D. 1955.

(\$7.70 R.S.) Loyd L Hardin

Vivian Hardin

THE STATE OF TEXAS,) BEFORE ME, a Notary Public,
COUNTY OF COMANCHE) in and for Comanche County,

Texas, on this day personally appeared Lloyd L. Hardin and Vivian Hardin, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed, and the said Vivian Hardin, wife of the said Lloyd L. Hardin having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Vivian Hardin acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it. GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 22nd day of September, A.D. 1955.

(Seal) Frederick G. Harmon
Notary Public, Comanche
County, Texas.

Filed for record on the 1st day of October, A.D. 1955 at
9:00 o'clock A.M.

Recorded on the 4th day of October, A.D. 1955 at 1:20
o'clock P.M.

Signed by LINDA RIPPETOE, Deputy

Hazel Streety, County Clerk.

CLERK'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF COMANCHE)

I, Betty Conway, Clerk of the County Court of Comanche
County, Texas, do hereby certify that the above and foregoing
is a true and correct copy of

1. Warranty Deed

as same appears of record in volume 284, Page 316 of the Deed
Records of Comanche County, Texas

Given under my hand and seal of office in the City of
Comanche, Comanche County, Texas, this 3rd day of June
A.D., 1986.

BETTY CONWAY, County Clerk
Comanche County, Texas

Signed by VIANN MELOT, Deputy

EXHIBIT Q

The Business Homestead

The head of a house who has a profession or business can have a business homestead, which may be part of the residence or separate from it. The business homestead is likewise exempted from forced sale. The premises claimed as a business homestead must be reasonably suited to the transaction of the business or profession. Therefore, one may have a rural homestead where he and his wife and children live, and simultaneously have a business homestead in town. Conversely, he may have an urban homestead where he and his wife and children live, and also have a rural business homestead.

Along with the business homestead, the equipment and machines necessary for carrying on the business or profession of the head of the family are exempt from forced sale. Moreover, the head of the house may carry on more than one profession or business in the business homestead, and the appurtenances of each would be exempt. The head of the house cannot have two different businesses or professions in two different places and claim both places as business homesteads. He can have the exemptions for only one business homestead.

Tools of any lawful trade when they are used by the owner are exempt. Even though the owner may cease using his trade tools temporarily, such as when he goes on vacation, this does not change the exempt status of the tools.

It is this state's policy that a man must be protected in the ownership and use of his home and in his means of making a living for himself and his family.

Excerpt from *TEXAS LAW in layman's language*
by Ralph Walton

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Certification of Service

I, Lavoyd Wayne "Bill" Hardin, pro-se, certify that three copies of the foregoing supplement appendix was mailed by first class mail to respondent's attorney, Gilbert and Colvin, 1035 InterFirst Tower Fort Worth, Texas 76102.

Signed this 6th day of March, 1987.

Lavoyd Wayne "Bill" Hardin pro-se
Lavoyd Wayne "Bill" Hardin, pro-se
Route 1, Box 127A
DeLeon, Texas 76444
Telephone (817) 893-2686